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petitioner had offered four mules as security for a loan from the bank, which at maturity was not repaid. By consent of all parties the mules were sold free of all liens for \$468. Thereafter petitioner claimed an exemption of \$300 from the proceeds of the sale. From the quandary as to whether those mules were wearing apparel, household or kitchen furniture, the United States Circuit Court of Appeals delivers us by deciding that the exemption is confined to specific articles, and that petitioner, having waived his right to property without the exception, cannot reclaim it.

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**Necessity of Saving Human Life Excuses Trespass.**—While plaintiff, with his wife and small children, was on Lake Champlain in a loaded sloop, a violent storm arose. Desiring to escape the hazard of the open water, plaintiff moored his boat to defendant's dock. Thereupon defendant's servant cast the boat off. It was caught in the tempest and driven ashore. The occupants were thrown into the water or onto the shore and injured. The cargo was lost. The Supreme Court of Vermont in *Ploof v. Putnam*, 71 Atlantic Reporter, 188, decided that even had the act of mooring the boat been a trespass, it was the duty of defendant to refrain from casting it off until the fury of the gale had abated, as the preservation of human life was of paramount importance. We take the following excellent annotation to this Vermont case from February number of the "Harvard Law Review:—"

**Necessity as an Excuse for a Trespass upon Land.**—Since the earliest times there have been many well-recognized exceptions to the rule that any unauthorized entry upon the land of another is an actionable trespass. Hence the subjection to excusable entries must be regarded as one of the reasonable burdens of property ownership. The legal justifications for trespasses on land may be roughly divided into three groups: First, where the entry is excused on the ground of implied leave and license.<sup>1</sup> The second division comprises trespasses committed in the administration of justice.<sup>2</sup> The numerous other circumstances under which trespasses have been excused may be grouped under the head of necessity, public and private.

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1. *Ditchman v. Bond*, 3 Camp. 524; *Martin v. Houghton*, 45 Barb. (N. Y.) 258.

2. Entry by officer to make an arrest or attachment. *State v. Smith*, 1 N. H. 346; *Haggerty v. Wilber*, 16 John. (N. Y.) 287. Closely allied are cases of entry by a private individual in the recaption of realty, *Fort Dearborn Lodge v. Klien*, 115 Ill. 177; see *Low v. Elwell*, 121 Mass. 309; or in the recaption of personalty, *Patrick v. Colerick*, 3 M. & W. 483; *Madden v. Brown*, 8 N. Y. App. Div. 454 (the theory of implied license suggested in these cases seems a fiction); or to abate a nuisance, *Amoskeag Co. v. Goodale*, 46 N. H. 53. See *Brown v. Perkins*, 12 Gray (Mass.) 89.

Justification on the ground of public necessity is based on the broad common law maxim that, in case of conflict, private rights must yield to public convenience and necessity. Thus, an entry on land for the defense of the realm has long since been held justifiable,<sup>3</sup> and in this country numerous decisions have exonerated interference with property in time of war.<sup>4</sup> Also, where the public safety is endangered a trespass is an excusable means of relief,<sup>5</sup> as, for instance, the destruction of property to prevent the spread of fire.<sup>6</sup> Another common illustration of this doctrine is the right of a traveller to pass through lands adjoining an impassable highway.<sup>7</sup>

Justification by private necessity is equally well founded in the common law, although here there is no basis of public convenience. The conflict is between the claims of two individuals, so that in each case the court must balance the interest of the land-owner against the needs of the trespasser. The doctrine would therefore seem to be merely an instance of the adoption by the common law of natural rights by necessity. In this the courts are naturally conservative and for its application require some such necessity as the preservation of life or property.<sup>8</sup> Thus neither the pursuit of game, even though of a dangerous nature,<sup>9</sup> nor the demand of charity or family affection<sup>10</sup> is a sufficient ground to excuse a trespass. On the other hand, it has always been the rule that an entry to save the goods of the land-owner, and, in some circumstances, of a third person, from destruction by fire or water is not actionable,<sup>11</sup> and a man may go on land to recover cattle escaped from the highway.<sup>12</sup> The preservation of

3. 20 Vin. Abr., Trespass (B. a), pl. 4; Saltpetre Case, 12 Rep. 12.

4. *Respublica v. Sparhawk*, 1 Dall. (U. S.) 357; *United States v. Pacific R. R.*, 120

5. *Dewey v. White, M. & M.* 56. See *Seavey v. Preble*, 64 Me. 120.

6. *Suocco v. Geary*, 3 Cal. 69; *Russell v. Mayor of N. Y.*, 2 Den. (N. Y.) 461. See *Metallic Compression Casting Co. v. Fitchburg R. Co.*, 109 Mass. 277.

7. *Campbell v. Race*, 7 Cush. (Mass.) 408; *Morey v. Fitzgerald*, 56 Vt. 487; *Absor French*, 2 Show. 29, where the adjoining landowner caused the obstruction. In the case of a private way deviation is excusable only when the owner of the servient tenement causes the obstruction. *Haley v. Colcord*, 56 N. H. 7; *Taylor v. Whitehead*, 2 Doug. 745.

8. The necessity must arise independently of the fault of the trespasser. 6 Bacon, Abr., Trespass, 674; Anonymous, Y. B. 6 Ed. IV, 7, pl. 18. See *Millen v. Fawdry, Latch.* 119.

9. *Glenn v. Kays*, 1 Ill. App. 479; *Paul v. Summerhayes*, 4 Q. B. D. 9.

10. *Parlet v. Bowman*, 2 Rol. Abr. 567; *Neilson v. Brown*, 13 R. I. 651.

11. 20 Vin. Abr., Trespass (H. a. 4), pl. 24; *ibid.* (K. a) pl. 3; *Proctor v. Adams*, 113 Mass. 376.

12. *Goodwin v. Cheveley*, 4 H. & N. 631; *Rightmire v. Shepard*, 12 N. Y. Supp. 800.

human life would surely seem to be sufficient necessity, and in the analogous case of trespass to personalty it has been so held.<sup>13</sup> The admiralty doctrine of jettison seems based on this ground.<sup>14</sup> And the old books say that a man fleeing from attack may cross another's close with impunity.<sup>15</sup> A recent decision raises this question, it is believed, for the first time in this country. While sailing with his family the plaintiff was forced by a storm to moor to the defendant's dock to save his boat and the people in it from destruction. The defendant cast off the boat, with the result that it was wrecked and the plaintiff injured. The court, in overruling the defendant's demurrer, held that the plaintiff's trespass was excused by its necessity. *Ploof v. Putnam*, 71 Atl. 188 (Vt.), Stress of weather has been held sufficient necessity to justify a breach of the Embargo Act.<sup>16</sup> The decision therefore seems correct and in accord with authority. Whether, though the entry is excusable, an action at the suit of the landowner will lie for any damage done is a point upon which there is as yet no authority.<sup>17</sup>

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**Actions Under Foreign Statutes.**—The New Jersey statute provides that where a bond and mortgage are given for the same debt, an action may be brought on the bond within six months after foreclosure for any deficiency, and judgment for the creditor shall open the foreclosure entitling the mortgagor to sue within six months to redeem. Parties to a bond and mortgage on real property in New Jersey were residents of that state. The assignee of the bond brought an action in New York to recover an amount remaining due thereon. The court characterized this as an action to enforce a common-law obligation, transitory, and maintainable outside the state where the contract was made. The provisions of the New Jersey statute, however, were a part of the contract, and regulated the manner of performance. It was claimed that to allow a recovery on the bond would work injustice because the defendant would be compelled to pay the deficiency arising on the mortgage sale, and would be deprived of the right to redeem the mortgaged property. The New York Court of Appeals in *Hutchinson v. Ward*, 85 Northeastern Reporter, 390, concluded that such a recovery would open the foreclosure sale permitting the judgment debtor to redeem the property, and held that such a suit was maintainable in New York.

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13. *Mouse's Case*, 12 Rep. 63. See *Respublica v. Sparhawk*, *supra*.

14. See *Abbott, Shipping*, 14 ed., 753-757; *Price v. Hartshorn*, 44 N. Y. 94.

15. 6 Bacon Abr., Trespass, 674, But *cf.* *Gilbert v. Stone*, Aley 35.

16. *The Brig William Gray*, 1 Paine 16.

17. See 3 HARV. L. REV. 189, 204; *Terry, Principles of Anglo-American Law*, § 425.